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100TH CONGRESS
2d Session

SENATE

REPORT
100-568

RIO CHAMA RIVER, NEW MEXICO

SEPTEMBER 30 (legislative day, SEPTEMBER 26), 1988.—Ordered to be printed

Mr. JOHNSTON, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany S. 850]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 850) to amend the Wild and Scenic Rivers Act to designate a segment of the Rio Chama River in New Mexico as a component of the National Wild and Scenic Rivers System, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. DESIGNATION OF RIO CHAMA RIVER.

(a) DESIGNATION.—Section 3(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1274(a)) is amended by adding the following new paragraph at the end:

"(62) RIO CHAMA, NEW MEXICO.—The segment extending from El Vado Ranch launch site (immediately south of El Vado Dam) downstream approximately 27.6 miles to elevation 6,308 feet above mean sea level; to be administered by the Secretary of Agriculture and the Secretary of the Interior. For purposes of compliance with the planning requirements of subsection (d), the Cooperative Management Plan for the river prepared by the Secretary of Agriculture and the Secretary of the Interior may be revised and amended to the extent necessary to conform to the provisions of this Act. The segment of the Rio Chama beginning at the El Vado Ranch launch site downstream to the beginning of Forest Service Road 151 shall be administered as a wild river and the segment downstream from the beginning of Forest Service Road 151 to elevation 6,308 feet shall be administered as a scenic river.".

(b) RENUMBERING.—Section 3(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1274(a)) is amended by redesignating the paragraphs relating to the Cache La Poudre River, the Saline Bayou, Black Creek, the Klickitat, and the White Salmon as paragraphs (57) through (61), respectively.

SEC. 2. MANAGEMENT OF OTHER RIVER SEGMENT AND FOREST SERVICE LANDS.

(a) The Secretary of the Army, acting through the Chief of Engineers, the Secretary of the Interior, acting through the Bureau of Land Management, and the Secre-

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tary of Agriculture, acting through the Forest Service, shall jointly manage the segment of the Rio Chama River in New Mexico from elevation 6,308 feet above mean sea level downstream to elevation 6,235 feet above mean sea level. Such management shall be pursuant to—

(1) the Preferred Alternative for the proposed Santa Fe National Forest Plan (dated January 1986);

(2) the "Interim Rio Chama River Management Plan," dated May 1986 (as that plan may be revised in the "Final Rio Chama River Management Plan"):

(3) Shall be consistent with the operation of Abiquiu Dam for purposes authorized by Section 5 of Public Law 97-140 or otherwise authorized prior to December 31, 1988.

(b) Nothing in this Act, or any other Act of Congress, shall be construed to require that the Secretary of the Army release water authorized for storage at Abiquiu Dam pursuant to Section 5 of Public Law 97-140 or otherwise authorized prior to December 31, 1988.

(c) The Secretary of Agriculture shall not acquire, except by consent of owner, any interests in the Jolly-Chama Canyon Subdivision: *Provided,* That such subdivision lands are maintained in single unit private residential use.

Purpose for the Measure

The primary purpose of S. 850 is to designate a 27.6 mile segment of the Rio Chama in New Mexico as a component of the National Wild and Scenic Rivers System.

Background and Need

The segment of the Rio Chama which is the subject of this legislation, is located in Arriba County in northern New Mexico. The segment runs between the El Vado Dam upstream and the cultorized pool of the Abiquiu Reservoir downstream. The river is presently jointly administered by the Bureau of Land Management (BLM) and the Forest Service under an interim river management plan prepared in 1986. The BLM has approximately one-third of the land upstream, while the Forest Service manages the lower two-thirds. There are a few scattered private inholdings within the riverway boundary.

The Rio Chama is considered one of the finest scenic and recreational streams in New Mexico. The National Rivers Inventory, prepared by the National Park Service in 1982 stated that "In terms of total recreation usability, (the Rio Chama) is the most important and valuable river in the state." The State of New Mexico designated this segment of the Rio Chama as the state's only "Scenic and Pastoral River" in 1987. Both BLM and Forest Service land management plans for the area have found the river eligible for wild and scenic designation. The river segment includes a BLM Wilderness Study Area and the Congressionally designated Chama River Canyon Wilderness Area located in the Santa Fe and Carson National Forests.

Legislative History

S. 850 was introduced by Senators Bingaman and Domenici on March 26, 1987. A hearing was held by the Subcommittee on Public Lands, National Parks and Forest in Santa Fe, New Mexico on July 27, 1987. A hearing was held in Washington, D.C. on December 17, 1987. A House companion measure, H.R. 1839, passed the House of Representatives on October 27, 1987.

At the business meeting on Thursday, September 22, 1988, the Senate Committee on Energy and Natural Resources ordered S. 850, as amended, favorably reported.

Committee Recommendations and Tabulation of Votes

The Senate Committee on Energy and Natural Resources, in open business session on Thursday, September 22, 1988, by unanimous voice vote of a quorum present, recommends that the Senate pass S. 850 if amended, as described herein.

Committee Amendment

During the consideration of S. 850, the Committee adopted an amendment in the nature of a substitute. The substitute included a number of technical and conforming changes as well as several substantive changes from the bill as introduced. Those substantive differences are discussed in the "Section-By-Section Analysis" portion of this report.

Section-by-Section Analysis

Section 1(a) designates a 27.6 mile segment of the Rio Chama in New Mexico as a component of the wild and scenic rivers system. The segment extends from the El Vado Ranch launch site downstream to elevations 6,308 feet. The bill as introduced extended the river segment an additional mile down to elevation 6,283.5 feet. This change seeks to assure that 200,000 acre-feet of San Juan-Chama project water or the replacement storage discussed below under section 2(a) stored farther downstream behind Abiquiu Dam will not intrude into the wild and scenic river.

The Committee notes that a portion of the river flows through a BLM wilderness study area and an existing wilderness area administered by the Forest Service. Management direction for this segment of the river is to be in accordance with section 10(b) of the Wild and Scenic Rivers Act.

Subsection (b) corrects a numbering error in the Wild and Scenic Rivers Act.

Section 2(a) provides for joint management of that portion of the Rio Chama from elevation 6,308 feet to 6,235 feet (a distance of 2.7 miles) between the Corps of Engineers, Forest Service, and the Bureau of Land Management. S. 850, as introduced, did not include the Corps of Engineers in the management of this section of the river.

This management is to be pursuant to the applicable portion of the Preferred Alternative for the Santa Fe National Forest (January, 1986) and the joint interim management plan prepared for the river by the Forest Service and BLM, May 1986 and any revision of the plan which will be included in the final plan prepared by these agencies.

In addition, the management of this 2.7 mile segment is to be consistent with the operation of the Abiquiu Dam for purposes authorized by Section 5 of Public Law 97-140 or otherwise authorized prior to December 31, 1988. These purposes include the original authorization for flood control; the 200,000 acre-feet of San Juan-

Chama project storage authorized by section 5 of Public Law 97-140; and anticipated authorization during the 100th Congress of replacement storage at Abiquiu for the 200,000 acre-feet of San Juan-Chama water, once that water begins to be drawn down.

The Committee notes that legislation providing such authorization for replacement storage is currently being considered by the appropriate Committees of the House and Senate. It is anticipated that this legislation (S. 850) and this new authorization for replacement storage, will move forward together through the legislative process.

Section 2(b) provides that the Secretary of the Army shall not be required by the Wild and Scenic Rivers Act, or other act of Congress, to release water authorized for storage at Abiquiu Dam pursuant to section 5 of Public Law 97-140 or otherwise authorized prior to December 31, 1988, even if that water, in a period of extreme flooding, would back into the wild and scenic river. This subsection was not included in the bill as introduced.

Section 2(c), also added by the substitute amendment, prohibits the Secretary of Agriculture from acquiring (except by donation or purchase from a willing seller) any interest in lands within the 17.5 acre Jolly-Chama Canyon subdivision so long as any development of the undeveloped property is consistent with existing uses—single family cabins or cottages. The Committee notes that since more than 50 percent of the river corridor is publicly owned, the Secretary can not acquire private parcels along the river in fee by condemnation.

Cost and Budgetary Considerations

The following estimate of the cost of this measure has been provided by the Congressional Budget Office:

U.S. Congress,
Congressional Budget Office,
Washington, DC, September 27, 1988.

Hon. J. Bennett Johnston, Jr.,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed S. 850, a bill to amend the Wild and Scenic Rivers Act to designate a segment of the Rio Chama River in New Mexico as a component of the National Wild and Scenic Rivers System, as ordered reported by the Senate Committee on Energy and Natural Resources, September 22, 1987.

In addition to adding approximately 28 miles of the Rio Chama River to the wild and scenic river system, S. 850 would direct that the Departments of Agriculture and the Interior manage another segment of the river, together with certain Forest Service lands, in accordance with specific plans.

Based on information from the Bureau of Land Management and the Forest Service, CBO estimates that enactment of this bill would result in additional costs to the federal government, primarily for planning, facility development and other management activities,

totaling approximately $250,000 over five fiscal years, beginning in 1989.

We estimate that enactment of this bill will not affect the budgets of state or local governments.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Theresa Gullo, who can be reached at 226-2860.

Sincerely,

JAMES L. BLUM,
Acting Director.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 850. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact of personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 850, as reported.

EXECUTIVE COMMUNICATIONS

On July 9, 1987, the Committee on Energy and Natural Resources requested legislative reports from the Departments of the Interior, Agriculture, the Army Corps of Engineers and the Office of Management and Budget setting forth executive views on S. 850. The report from the Department of Agriculture follows. At the time this report was filed, no report had been received regarding this measure from the Department of the Interior and the Army Corps of Engineers. When the reports becomes available, the chairman will request that they be printed in the Congressional Record for the advice of the Senate. The testimony provided by the appropriate agency at the Subcommittee hearing follows:

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, DC, January 19, 1988.

Hon. J. BENNETT JOHNSTON,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This is in reply to your request for the views of this Department regarding S. 850, a bill "To amend the Wild and Scenic Rivers Act to designate a segment of the Rio Chama River in New Mexico as a component of the National Wild and Scenic Rivers System."

The Department of Agriculture recommends enactment of the bill if amended as we suggest. We defer to the Department of the Interior regarding those portions of the bill affecting lands administered by the Bureau of Land Management. We defer to the U.S. Army Corps of Engineers regarding those portions of the bill affecting lands withdrawn for the Abiquiu Reservoir.

Section 1 of S. 850 would designate 30.75 miles of the Rio Chama River, generally between El Vado Dam and Abiquiu Reservoir as a component of the National Wild and Scenic Rivers System.

Section 2 would direct the Secretary of the Interior, acting through the Bureau of Land Management, and the Secretary of Agriculture, acting through the Forest Service, to manage the segment of the Rio Chama River from elevation 6,283.5 feet above mean sea level downstreams to elevation 6,235 feet above mean sea level. This segment is within the authorized flood control reservoir for Abiquiu Dam. This segment would be managed together with the adjacent Forest Service lands not included in the Chama River Canyon Wilderness.

The Sante Fe National Forest Plan recommends inclusion of 31 miles of the Rio Chama River in the National Wild and Scenic Rivers System. This recommendation is the result of several years of study conducted by the Forest Service in cooperation with the Bureau of Land Management, other Federal agencies, and the State of New Mexico. This process included extensive public review as required by the Wild and Scenic Rivers Act.

The Forest Plan recommends that the 21.5-mile segment of the river beginning at the El Vado launch site downstream to the Chama River Canyon Wilderness boundary—at the northern property line of the Monastery of Christ in the Desert—be administered as a wild river. The Forest Plan also recommends that the 9.5-mile segment downstream from the monastery boundary line to elevation 6,283.5 feet be administered as a recreational river.

The following recommendations apply only to the 21 miles of the river within the National Forest boundary. As stated earlier, we defer to the Department of the Interior regarding those portions of the bill affecting lands administered by the Bureau of Land Management.

We recommend that the 11.5-mile segment from the National Forest boundary downstream to the northern property line of the monastery be classified as a wild river.

We recommend that the segment of the river between the northern and southern monastery property lines not be designated. This would assure that the Federal government would not be expected to acquire this property some time in the future.

We recommend that the segment of the river from the southern monastery property line downstream to elevation 6,353 be classified as a recreational river. S. 850 would classify this segment as a scenic river. A recreational classification would be more in line with the definitions of the classifications in the Wild and Scenic Rivers Act. This segment is paralleled in part by two different roads. A scenic classification might limit the development of campground facilities as contemplated in the Forest Plan to meet public needs.

On October 1, before the House Interior Subcommittee on National Parks and Public Lands concerning an identical bill, H.R. 1839, we indicated that the Corps of Engineers had concerns regarding designation of the Rio Chama between the elevations of 6,353 feet and 6,283.5 feet (approximately 4 miles). Designation of this segment would foreclose the option to raise the pool level to

6,353 feet. As a result of these concerns, we defer to the U.S. Army Corps of Engineers regarding this segment.

We recommend that S. 850 be amended to reflect these recommendations. We also recommend other amendments to clarify administrative responsibilities and to remove unnecessary language. These recommendations are presented, with supporting rationale, in the enclosed supplemental statement.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

PETER C. MYERS,
Deputy Secretary.

Enclosure.

SUPPLEMENTAL STATEMENT—U.S. DEPARTMENT OF AGRICULTURE

SECTION 1(a)

Clarify the sentence on page 1, lines 7 through 9, and page 2, lines 1 through 3. This statement is ambiguous, and it appears that it would authorize joint administrative responsibility over the proposed Rio Chama Wild and Scenic River to both the Secretary of Agriculture and the Secretary of the Interior. Add the following to the sentence: "in accordance with their jurisdictional responsibilities and any interagency agreements as to the management of the segment that may be entered into by the Secretaries."

Delete the sentence on page 2, lines 3 through 8. Adequate authority to develop, revise, and amend a "Cooperative Management Plan" is already contained in Section 10 of the Wild and Scenic Rivers Act and in general statutory authority granted the Secretary of Agriculture and the Secretary of the Interior.

Delete the sentence on page 2, lines 13 through 17. This philosophy is already stated in Section 10(b) of the Wild and Scenic Rivers Act.

SECTION 2

Delete lines 1 through 17. S. 850 would not amend the Wild and Scenic Rivers Act to designate this segment of the Rio Chama River as a component of the National Wild and Scenic Rivers System. Adequate authority for management of this segment is contained in the 1897 Organic Act, the Multiple-Use Sustained-Yield Act of 1960, and the Federal Land Policy and Management Act of 1976. No additional authorities are necessary.

Delete lines 18 through 20, and insert the following at the end of Section 1:

(c) ABIQUIU DAM.—Nothing in this Act shall be construed to prohibit operation of Abiquiu Dam for purposes authorized by law as of the date of enactment of this Act.

STATEMENT OF ROBERT F. BURFORD, DIRECTOR, BUREAU OF LAND MANAGEMENT, U.S. DEPARTMENT OF THE INTERIOR

I appreciate the opportunity to appear here today to discuss the views of the Department of the Interior on S. 850.

We support enactment of those provisions S. 850 that relate to land administered by BLM. We defer to the Forest Service as to the remainder of the river segment that would be designated under S. 850. We also suggest that the bill be amended as the Forest Service, Department of Agriculture, recommends.

S. 850 would designate a 30.75 mile segment of the Rio Chama in north-central New Mexico as a component of the National Wild and Scenic Rivers System. Affected would be the segment of the river to be administered by the Secretaries of Agriculture and the Interior running downstream from the El Vado Dam to 6,283.5 feet above mean sea level. The segment from the El Vado Ranch launch site downstream to the beginning of Forest Service Road 151 would be administered as a wild river, and the remaining segment downstream would be administered as a scenic river.

Section 2 of the bill would require the two Secretaries, acting through the Forest Service and the Bureau of Land Management (BLM) respectively, to manage the segment of the Rio Chama from elevation 6,283.5 feet above mean sea level downstream to 6,235 feet above mean sea level, together with adjacent Forest Service lands that are not part of the Chama River Canyon Wilderness. This management would be pursuant to the January 1986, Preferred Alternative for the proposed Santa Fe National Forest Plan, and the May 1986, "Interim Rio Chama River Management Plan," or as revised in the "Final Rio Chama River Management Plan." Finally, the bill would provide that nothing in this section shall be construed to prohibit operation of the Abiquiu Dam for purposes authorized by law.

In September, 1987, the Bureau of Land Management completed the Resource Management Plan for the public lands surrounding the Rio Chama, and it is now in effect, having been open to public comments for 30 days. Designating that portion of the river as a wild and scenic river would be consistent with that plan.

The BLM has been involved in management of the Rio Chama since 1980. Some of our early activities included designation of commercial and private visitor days, assessment of the environmental impacts from camping, and studies of the effects on fisheries of discharges from El Vado Dam.

In 1984, our management efforts intensified under a revised Memorandum of Understanding (MOU) with the Santa Fe National Forest. This MOU divided the wild and scenic river area proposed in S. 850 into two administrative areas. The portion managed by the BLM is the 21.5 mile section above the Christ in the Desert Monastery at the end of Forest Service Road 151. This area, which would become a wild river upon enactment of the bill, contains a section of the river bordered by designated Forest Service Wilderness and a BLM Wilderness Study Area.

The MOU provides for management of the section below the Monastery by the Forest Service. This 9.5 mile section, which S. 850 would designate a scenic river, is accessible by road and has

been subject to intensive recreational use by both boating and land-based users.

The 1984 MOU required an Interim River Management Plan to be developed by both agencies to address management needs on the river. This Interim Plan has been guiding our joint management efforts since 1986. Boating on the BLM section of the Rio Chama, the segment that would be designated as a wild river, has increased from 1,300 visitor days in 1980 to 3,000 visitor days in 1986. Peak weekend use (for example, Memorial Day weekends) now exceeds 200 people launching each day. We believe that this approaches maximum capacity for quality camping on the proposed wild section to be managed by BLM.

On Labor Day weekend, 1987, over 200 people launched rafts, kayaks, and canoes at the El Vado put-in point. There were whitewater enthusiasts from Arizona, Utah, Colorado, and New Mexico. In addition to the water related thrills and scenery, the overnight camping in the wild section attracts people to the Rio Chama. This is the only such whitewater camping opportunity in New Mexico.

Most of the significant increase in use appears to be among private users. Commercial use is expected to remain level until predictable flows during tourist season can be assured through regular and predictable releases from the dam. The scheduling of such releases depends on cooperation among the water right holders and managing agencies, and on the availability of downstream storage or water demand. If and when regular releases occur, BLM anticipates an increase in recreational use to 5,000 visitor days the first year and to 10,000 visitor days by the third year.

The Resource Management Plan that I mentioned earlier assures protection of the river corridor as a Special Management Area. Our Plan also recommends designation of the public land from a point approximately 3 miles downstream from the El Vado Ranch put-in to the Forest Service boundary as a wild and scenic river area.

We concur in the recommendations of the Forest Service that the 9.5 miles of river from the southern boundary of the monastery to elevation 6,233.5 be designated as a recreation river rather than a scenic river, that section 2, lines 1 through 17 of S. 850 be deleted and that section 1(a) be amended to clarify areas of jurisdiction between the Bureau of Land Management and Forest Service.

The Bureau of Land Management in New Mexico has worked closely with the Forest Service, Bureau of Reclamation, Fish and Wildlife Service, Army Corps of Engineers, New Mexico's Department of Natural Resources and Game and Fish, the New Mexico State Engineer, the City of Albuquerque Water Resources Department, and the Middle Rio Grande Conservancy District in managing the Rio Chama.

The Rio Chama is one of the most valuable water-based recreational areas on public lands in New Mexico. It is an important attraction for tourists and, thus, an important source of revenue for northern New Mexico communities.

This concludes my prepared statement. I will be pleased to answer questions.

STATEMENT BY BRIG. GEN. PETER OFFRINGA, DEPUTY DIRECTOR FOR CIVIL WORKS, U.S. ARMY CORPS OF ENGINEERS

Mr. Chairman, members of the Subcommittee, I am Brigadier General Peter Offringa, Deputy Director for Civil Works for the U.S. Army Corps of Engineers. Accompanying me today is Dick Kreiner, head of the Reservoir Regulation Group, and Jim White, Chief of the Environmental Section of the Albuquerque District. It is a pleasure to have the opportunity to testify on S. 850, 100th Congress, which deals with the proposed Wild and Scenic designation for the Rio Chama in New Mexico. As you will recall, Lieutenant Colonel Kent Gonser, District Engineer for Albuquerque District, testified on the same subject at a field hearing in Santa Fe, New Mexico last July.

The Corps of Engineers recognizes the beauty of the Rio Chama between El Vado and Abiquiu Reservoirs and agrees that portions of it are wild and unique. We defer to the Departments of Agriculture and Interior on the merits of designating the 25 mile portion of the river between El Vado Ranch launch site and elevation 6,353 MSL as a component of the National Wild and Scenic River System.

The Department of the Army has two major concerns with the bill. The first is with Section 2, which provides for Bureau of Land Management and Forest Service management in a portion of the Rio Chama that is within the Abiquiu Reservoir and below the limits of the flood control pool (that is, below elevation 6,283.5 MSL). Secondly, we are concerned about serious disadvantages to the public which would occur if the stretch of the river between elevations 6,283.5 and 6,353 MSL is designated as a component of the Wild and Scenic Rivers System. I will address each of these items separately.

First, let me address the portion of the Rio Chama between elevations 6,235 and 6,283.5. This section lies within the portion of Abiquiu Reservoir dedicated to storing water for flood control. Much of Abiquiu Reservoir above elevation 6,235 lies within private ownership. At the time of construction, the Corps obtained flowage easements on that land from elevation 6,215 to elevation 6,293.5. However, all lands referred to in S. 850 lie in the Santa Fe National Forest. This land was withdrawn from the U.S. Forest Service and the Bureau of Land Management up to elevation 6,353.0. The conditions of these easements and withdrawals allow the Corps to temporarily store water on those lands. However, when not being used for flood storage, these lands are managed by their respective owners and agencies, including the U.S. Forest Service. Any private lands in the area upon which flood easements were acquired and which may have since been purchased by the U.S. Forest Service remain subject to these easements since the easements are deed conditions.

Abiquiu Dam was generally authorized by Public Law 868, 80th Congress. Authorized project purposes are flood control, sediment retention, and recreation. It is part of a system of reservoirs in the Rio Grande basin operated under a complex, institutional arrangement in accordance with the provisions of the Rio Grande Compact and Public Law 86-645. These provisions regulate to a large extent

the timing and quantity of releases that can be made from Abiquiu Dam. Some variance is allowed with the advice and consent of the Rio Grande Compact Commission and approval by the District Engineer. Operation of the dam in accordance with Public Law 86-645 and in support of the Rio Grande Compact results in numerous disputes among downstream competing interests. Because the reservoirs in the middle Rio Grande basin are operated as a flood control system, there is some flexibility as to which reservoir is used to store particular flood waters. This flexibility allows the Corps to optimize the effectiveness of the system. Because of this flexibility, many interests frequently request that the District Engineer seek variances with the concurrence of the Commission. For example, farmers downstream want carryover water released to assist irrigation operations; the State of Texas doesn't want releases in the summer because of stream losses between Abiquiu and Elephant Butte Reservoir. Landowners downstream don't want high releases during peak reservoir inflows because of streambank erosion problems and the possibility of flooding; recreation users of the Rio Chama want the flood control pool evacuated as quickly as possible to use the river for canoeing and rafting. These conflicts must be worked out by the Corps of Engineers within the limits of the Rio Grande Compact and Public Law 86-645.

However, conflicts in the use of the Rio Chama above Abiquiu Reservoir between elevations 6,235 and 6,283.5 were virtually nonexistent prior to 1985. Since 1985, a series of unusually wet years and the utilization of storage for San Juan-Chama waters as authorized by PL 97-140 has caused reservoir operations to store water above elevation 6,235 3 times. The maximum length of time that the water was stored above that elevation was from 19 May 86 to 20 Mar. 87 and we have prevented $120 million in flood damages downstream since 1985 by using that storage. Although water has been stored above elevaton 6,235 more frequently since 1985, the reach of the river between elevations 6,235 and 6,283.5 remains available for upstream recreational use most of the time.

It appears that Section 2 is unnecessary in that the activities discussed in that section can be carried out pursuant to existing authorities of the Federal agencies involved. We are concerned, however, that Section 2 may be used to hinder the Corps ability to make timely flood control decisions and other decisions regarding the storage of water. For example, a New Mexico act, passed in 1977, which designated portions of the Rio Chama as a "Scenic and Pastoral River" is the basis of a pending lawsuit. The New Mexico statute specifically provided that nothing in the act "shall be construed to be incompatible with regulation of river flow for flood control or beneficial uses of water". Nevertheless, the lawsuit claims that Federal officials were operating Abiquiu, Elephant Butte, and Caballo Dams in violation of the New Mexico Act. Although the district court dismissed the lawsuit for lack of subject matter jurisdiction, an appeal was taken, and the case is now pending before the 10th Circuit of the United States Court of Appeals.

In order to keep conflicts to a minimum, it must be clear that decisions related to the operation of Abiquiu Reservoir are controlled by the Corps of Engineers. In decision-making, the Corps has operated, and will continue to operate the reservoir, within ex-

isting laws and regulations in coordination with all interested parties, especially sister Federal agencies. Because we do not believe the present Section 2 of the bill is necessary, yet has the potential for creating conflict, we recommend that it be deleted. In addition, a new Section 2 should be added which states: "Nothing in the act affects, or interferes, with the Secretary of the Army's operation and management of Abiquiu Dam and Reservoir, as the Secretary of the Army determines appropriate, for purposes authorized by law as of the date of enactment of this act."

The second area of Corps concern, that portion of the river between elevation 6,283.5 and 6,353, is not required for frequent flood storage at the present time. This area would be subject to flooding only about once every hundred years. However, designation of this section of the river as Wild and Scenic would impact alternative potential uses of the reservoir. The bill should be amended to protect current and future uses of the reservoir in support of water supply, recreation, and flood control. I will address each of these concerns in detail as follows.

First, with respect to water supply, Section 5 of Public Law 97–140, authorized the Corps of Engineers to provide 200,000 acre-feet of storage in the Abiquiu project for entities which have contracted for San Juan-Chama project waters. At the time of initial dam construction, real estate flowage easements were only acquired to elevation 6,293.5 MSL (6,353 on U.S. Forest Service lands). Therefore, in order to accommodate the 200,000 acre-feet, the water is currently being stored in the lower portion of the flood pool, with the stipulation that these waters are subject to evacuation from the reservoir if the flood control space is needed. In the future, the City of Albuquerque may wish to allow the water to be retained in a permanent pool rather than lose the water because it had to be evacuated for flood control use. In order to make a permanent pool with storage equivalent to 200,000 acre-feet, additional real estate interests would be required.

Second, studies have recently been completed on reallocation of a portion of the reservoir for water supply. The studies concluded that, while additional storage for water supply was technically feasible, no local entities were willing to pay the costs associated with the additional conservation storage at this time. New Mexico, as you well know, is an arid state. It is conceivable that sometime in future dry years, some entity would need to use Abiquiu Reservoir for water supply.

Third, Abiquiu Reservoir contains no permanent pool for recreation. However, the 200,000 acre-feet and water stored in the sediment pool currently provide opportunity for slackwater-based recreation. This recreation generates about $3.4 million in benefits and local revenue yearly. The City of Albuquerque currently estimates that they will start using the San Juan-Chama water in 30 years. This water will be released downstream to compensate for overdraft of the groundwater which provides the City with its water supply. At that point, no storage would be needed by the City in Abiquiu Reservoir. In addition, the sediment pool will be almost completely filled, so there will be no permanent water in the lake. Local interests have recently recognized this and have ex-

pressed interest in establishing a permanent recreation pool at Abiquiu Reservoir.

Establishment of a permanent pool for any of the above future uses, without loss of flood control capacity would be precluded by the proposed legislation. We are aware that there are trade-offs involved in any decision. However, Congress should be aware that this bill precludes, as a practical matter, any of the opportunities previously mentioned including the possibility of future Federal revenue from recreation or water supply use of the dam. The Congress should also be aware that, in event of the design flood, Abiquiu Dam is not designed to release water quickly enough to keep flood water from backing up and inundating the reach between 6,283.5 and 6,353. The dam was designed this way so that, in event of a large, low-frequency flood, the dam would hold the water back, preventing flooding downstream. Therefore, for large floods, some portion of the reach between 6,283.5 and 6,353 will flood even if designated as a Wild and Scenic River.

In summary, we believe the Corps of Engineers should continue to operate and administer the flood control pool as it has since Abiquiu Reservoir was completed. The present Section 2 should be deleted and a new Section 2 added which states: "Nothing in the act affects or interferes with the Secretary of the Army's operation and management of Abiquiu Dam and Reservoir, as the Secretary of the Army determines appropriate, for purposes authorized by law as of the date of enactment of this act." In addition, we recommend that Congress modify the bill to protect future and existing water storage between elevations 6,353 and 6,283.5. If not so modified, the Administration would oppose the bill.

Once again, thank you for the opportunity to testify on this proposed legislation.

Changes in Existing Law

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, the Committee notes the following changes in existing law made by the bill, S. 850, as reported (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law to which no change is proposed is shown in roman):

WILD AND SCENIC RIVERS ACT

AN ACT To provide a National Wild and Scenic Rivers System, and for other purposes.

Be it enacted by the Senate and House of Repesentatives of the United States of America in Congress assembled, That (a) this Act may be cited as the "Wild and Scenic Rivers Act".

* * * * * * *

Sec. 3. (a) The following rivers and the land adjacent thereto are hereby designated as components of the national wild and scenic rivers system:

* * * * * * *

[(56)] *(57)* CACHE LA POUDRE, COLORADO.—The following segments as generally depicted on the proposed boundary map numbered FS–56 and dated March 1986, published by the United States Department of Agriculture, each to be administered by Secretary of Agriculture; except that those portions of the segments so designated which are within the boundary of Rocky Mountain National Park shall continue to be administered by the Secretary of the Interior:

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[(57)] *(58)* SALINE BAYOU, LOUISIANA.—The segment from Saline Lake upstream to the Kisatchie National Forest, as generally depicted on the Proposed Boundary Map, numbered FS–57, and dated March 1986; to be administered by the Secretary of Agriculture. For the purposes of the segment designated by this paragraph, there are authorized to be appropriated for fiscal years commencing after September 30, 1986, not to exceed $1,000,000 for the acquisition of lands and interests in lands and for development.

[(58)] *(59)* BLACK CREEK, MISSISSIPPI.—The segment from Fairley Bridge Landing upstream to Moody's Landing as generally depicted on a map entitled "Black Creek Wild and Scenic River", numbered FS–58, and dated March 1986, to be administered by the Secretary of Agriculture as a scenic river area under section 2(b)(2). For the purposes of the segment designated by this paragraph, there are authorized to be appropriated up to $300,000 for the acquisition of lands and interests in lands and for development.

[( )] *(60)* KLICKITAT, WASHINGTON.—The segment from its confluence with Wheeler Creek, Washington, near the town of Pitt, Washington, to its confluence with the Columbia River; to be classified as a recreation river and to be administered by the Secretary of Agriculture.

[( )] *(61)* WHITE SALMON, WASHINGTON.—The segment from its confluence with Gilmer Creek, Washington, near the town of B Z Corner, Washington, to its confluence with Buck Creek, Washington; to be classified as a scenic river and to be administered by the Secretary of Agriculture.

(62) RIO CHAMA, NEW MEXICO.—The segment extending from El Vado Ranch launch site (immediately south of El Vado Dam) downstream approximately 27.6 miles to elevation 6,308 feet above mean sea level; to be administered by the Secretary of Agriculture and the Secretary of the Interior. For purposes of compliance with the planning requirements of subsection (d), the Cooperative Management Plan for the river prepared by the Secretary of Agriculture and the Secretary of the Interior may be revised and amended to the extent necessary to conform to the provisions of this Act. The segment of the Rio Chama beginning at the El Vado Ranch launch site downstream to the beginning of Forest Service Road 151 shall be administered as a wild river and the segment downstream from the beginning of Forest Service Road 151 to elevation 6,308 feet shall be administered as a scenic river.

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Calendar No. 1033

100TH CONGRESS
2d Session

SENATE

REPORT
100-569

IMPROVING THE PROTECTION AND MANAGEMENT OF ARCHAEOLOGICAL RESOURCES ON FEDERAL LAND

SEPTEMBER 30 (legislative day, SEPTEMBER 26), 1988.—Ordered to be printed

Mr. JOHNSTON, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany S. 1985]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1985) to improve the protection and management of archaeological resources on federal land, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE MEASURE

The purpose of the measure is to require Federal land managers to develop plans and schedules for surveys of cultural resources, and to develop documents for reporting suspected violations of ARPA and procedures for completing such reports.

BACKGROUND AND NEED

The Archaeological Resources Protection Act of 1979 (ARPA) toughened the laws protecting archaeological resources on Federal and Indian lands by imposing criminal penalties for unauthorized excavation, damage, destruction or removal of archaeological resources. However, looting and damaging of cultural resources on federal lands have continued.

A recent GAO report has found that about one-third of the known archaeological sites in the four-State area of its study (New Mexico, Colorado, Utah and Arizona) have been looted. The Federal Government's task of protecting the archaeological resources is complicated by the vast amount of lands under its control and the

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millions of archaeological sites on those lands. The four states mentioned above contain an estimated 2 million archaeological sites.

Concern has arisen that the actual level of looting activity and the current condition of the archaeological sites are unknown because staffing and funding constraints limit the agencies' abilities to monitor the sites and document looting incidents. The Bureau of Land Management, the Forest Service and the National Park Service have surveyed less then 6 percent of their lands for cultural resources and violations of laws protecting them.

S. 1985 would amend ARPA by adding a new section that would direct the Secretaries of the Interior, Agriculture, and Defense, and the Chairman of the Board of the Tennessee Valley Authority to develop plans for surveying lands under their control to determine the extent of archaeological resources on those lands. Secondly, the measure requires that those agencies prepare a schedule for the surveying of those lands that are likely to contain the most scientifically important archaeological resources. Finally, S. 1985 directs the four agencies to develop documents and procedures for the reporting of suspected violations of ARPA.

Legislative History

S. 1985 was introduced on December 22, 1987 by Senators Domenici and Bingaman. A hearing was held by the Subcommittee on Public Lands, National Parks and Forests on September 14, 1988.

At the business meeting on Thursday, September 22, 1988, the Senate Committee on Energy and Natural Resources ordered S. 1985 favorably reported.

Committee Recommendations and Tabulation of Votes

The Senate Committee on Energy and Natural Resources, in open business session on Thursday, September 22, 1988, by unanimous voice vote of a quorum present, recommends that the Senate pass S. 1985 as described herein.

Cost and Budgetary Considerations

The following estimate of the cost of this measure has been provided by the Congressional Budget Office.

U.S. Congress,
Congressional Budget Office,
Washington, DC, September 28, 1988.

Hon. J. Bennett Johnston, Jr.,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed S. 1985, a bill to improve the protection and management of archaeological resources on federal land, as ordered reported by the Senate Committee on Energy and Natural Resources, September 22, 1988. Enactment of this bill would have no significant impact on the federal budget or on those of state or local governments.

S. 1985 would direct the Chairman of the Tennessee Valley Authority and the Secretaries of Agriculture, Defense and the Interior

to develop plans to survey and evaluate archaeological resources on federal lands. Most of these agencies are already carrying out similar activities, and the specific requirements of S. 1985 are not expected to add significantly to the cost of these existing programs.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Deborah Reis, who can be reached at 226-2860.

Sincerely,

JAMES L. BLUM,
Acting Director.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 1985. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact of personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 1985, as reported.

EXECUTIVE COMMUNICATIONS

On July 14, 1988, the Committee on Energy and Natural Resources requested legislative reports from the Departments of the Interior and Agriculture and the Office of Management and Budget setting forth executive views on S. 1985. These reports had not been received at the time the report on S. 1985 was filed. When the reports become available, the chairman will request that they be printed in the Congressional Record for the advice of the Senate. The testimony provided by the appropriate agency at the Subcommittee hearing follows:

STATEMENT OF JERRY ROGERS, ASSOCIATE DIRECTOR, NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR

Mr. Chairman, I appreciate the opportunity to provide your Subcommittee with the views of the Department of the Interior on these bills.

We strongly recommend the enactment of S. 1314. Alternatively, we would recommend the enactment of H.R. 4068, if it is amended as discussed below.

We do not recommend enactment of S. 1985, because it duplicates existing authority and procedures already in practice by the land managing agencies.

All three bills would amend the Archaeological Resources Protection Act of 1979. That Act authorizes Federal land managers to issue permits to qualified persons for removal of archaeological items that are 100 years old or older. It prohibits the excavation or removal of archaeological resources without such a permit, and it prohibits the sale or trade of resources removed from public lands or Indian lands without a permit. Criminal penalties are estab-

lished for violations, beginning with not more than $10,000 or one year imprisonment for knowing violations. Civil penalties are also authorized.

S. 1314 and H.R. 4068 would amend the 1979 Act in the following respects:

H.R. 4068 deletes the requirement that a resource to be protected under the Act must be "of archaeological interest"; no similar provision appears in S. 1314;

S. 1314 and H.R. 4068 make attempted violation of prohibited acts a crime in addition to actual violation as in the current law;

S. 1314 and H.R. 4068 reduce from $5,000 to $500 the value of resources which, if harmed, give rise to a doubling of the penalty; and

H.R. 4068 directs each Federal land manager to establish a public awareness program and submit an annual report thereon to the committees. No similar provision is contained in S. 1314.

We understand that the phrase "of archaeological interest" is deleted in H.R. 4068 because it has caused some confusion in some prosecutions for violations under the Act. While we do not object to this deletion, we believe is unnessary. The definition of "archaeological resource" in the existing regulations implementing the Act is clear and does not require any modification. If the committee adopts this provision we recommend that language in the committee report be included to affirm our belief that no change in the regulations is needed.

We strongly support making attempted violations a crime. Under existing law we cannot prosecute for looting archaeological resources until after the damage has occurred, and often then it is too late to save the material.

We also support lowering the value threshold to $500. We understand that prosecutors frequently have difficulty in demonstrating to judge and jury that damage meets or exceeds the present threshold of $5,000. The lower amount would probably not lessen the need for expert archaeological testimony about the cost of scientifically excavating and analyzing the resource and the cost of restoring and repairing a damaged resource, but judges and juries would more readily accept such testimony toward proving the lower value than the higher one.

H.R. 4068 would also require Federal land managers to establish a program to increase public awareness of the significance of archaeological resources on public lands, and the need to protect such resources. The bill would require each land manager to submit an annual report to the authorizing committees on the actions taken. We have no objection to a public awareness program concerning the need to protect archaeological resources, and we can do so under existing authority, but we see no need for an additional report. If the committees desire information on public awareness activities, it could be provided as part of the annual report to the Congress that is already required under the Act. We recommend the committee amend this provision such that the requirement to submit a report will be satisfied by information included in the

annual report required under existing law, if the committee adopts H.R. 4068.

S. 1985 would direct Interior, Agriculture, Defense, and TVA to develop plans for archaeological surveys on their lands, prepare a schedule for surveying lands containing the most scientifically valuable archaeological resources, and develop documents for reporting suspected violations and procedures for completing such reports.

We believe these proposed requirements duplicate the planning and inventorying that land management agencies are already authorized to do. For example, the National Park Service already has cultural resource management plans for most of its units. These plans are designed to include evaluations of survey needs and plans for programming these surveys.

Moreover, the land-managing bureaus in Interior already have developed documents and instituted procedures for reporting violations of ARPA. The National Park Service has also developed additional training for Federal and State law enforcement and resource specialists on how to use ARPA when violations have occurred or are suspected. We are working with the other agencies to improve the systematic collection of ARPA violation data Government-wide. Additional plans and document requirements, such as are contained in S. 1985, are not necessary.

Accordingly, we oppose enactment of S. 1985.

This concludes my prepared testimony, Mr. Chairman. I would be pleased to respond to any questions you may have.

STATEMENT OF WILLIAM L. RICE, DEPUTY CHIEF, FOREST SERVICE, U.S. DEPARTMENT OF AGRICULTURE

Mr. Chairman and members of the Subcommittee, thank you for this opportunity to offer the Department of Agriculture's views on S. 1314, H.R. 4068, and S. 1985, all of which would amend the Archaeological Resources Protection Act of 1979.

S. 1314 AND H.R. 4068, TO STRENGTHEN THE ENFORCEMENT PROVISIONS OF ARPA

S. 1314 and H.R. 4068 would strengthen the Archaeological Resources Protection Act (ARPA). We support the enactment of S. 1314. We would also support the enactment of H.R. 4068 if amended as described below.

Both bills would amend section 6(a) of ARPA to make it possible to arrest and prosecute those who "attempt" to loot archaeological resources. ARPA is presently worded so that actual excavation, removal, damage, or defacing—and therefore archaeological resource damage—must occur before an arrest can be made. It is very difficult to catch violators in the act of looting. This amendment would make it possible to arrest, prosecute, and convict without damage to the resource.

Both bills would also amend section 6(d) of ARPA to lower the threshold between a misdemeanor and a felony from $5,000 to $500. Under current law, in order to obtain a felony conviction, we must prove that the commercial and archaeological value and the

cost of restoration and repair of the archaeological resources exceeds $5,000. Determining the commercial value and restoration and repair costs for vandalized resources is relatively easy and straight-forward. However, the archaeological value is subject to varying professional opinions, and is therefore difficult to determine and defend. Reducing the value to $500 would increase the number of felony cases, because the commercial value and restoration and repair costs frequently exceed $500. This would serve as a significant deterrent to archaeological resource vandalism and theft.

If these amendments to ARPA are enacted, we would anticipate a higher conviction rate, more felony convictions and, most importantly, a reduction in the looting of archaeological resources.

H.R. 4068 would amend section 3(1) of ARPA by changing the definition of the term "archaeological resource." The phrase "which are of archaeological interest" would be struck from the definition. This subjective test has proven troublesome, because there are widely differing opinions regarding what is "of archaeological interest." On the other hand, the definition of "archaeological resource" in existing ARPA regulations is clear and does not need to be changed. Therefore, while we do not object to this deletion, it is not necessary. If this language is deleted, however, we recommend that the Committee report clarify that no change in the regulations will be needed.

H.R. 4068 would also amend section 10 of ARPA to require Federal land managers to establish a public awareness program dealing with the significance of the archaeological resources on public lands and Indian lands, and require annual reports to Congress on this program. While we do not object to conducting a public awareness program, and have authority to do so, we believe the reporting requirement duplicates the annual report already required by ARPA. Therefore, we recommend against this additional reporting requirement.

S. 1985, TO IMPROVE THE PROTECTION AND MANAGEMENT OF ARCHAEOLOGICAL RESOURCES

We oppose enactment of S. 1985.

S. 1985 would amend ARPA by adding a new section to require the Secretaries of the Interior, Agriculture, and Defense, and the Chairman of the Board of the Tennessee Valley Authority to develop plans and a schedule for archaeological surveys of lands under their control.

Presently, we conduct archaeological resource surveys on all National Forest lands where proposed land management activities could possibly disturb archaeological resources. We also survey areas where we believe there is a high probability of finding significant archaeological resources.

Additionally, cooperators, such as volunteers and universities, under the direction of the local Forest Supervisor, conduct surveys on National Forest lands. We do not, however, plan to survey the entire 190 million acres of the National Forest System. Because of the tremendous cost of implementing such a plan, and because many of the lands have a very low probability of containing impor-

tant archaeological resources, we believe a complete survey is unnecessary. We prefer to utilize sampling and other survey strategies to identify significant archaeological values on areas not involved in current land management activities.

Additionally, S. 1985 would require each Secretary to develop documents and a process for reporting suspected violations of ARPA. In 1982, we implemented the Law Enforcement Management Reporting System (LEMARS) in the Forest Service. LEMARS provides Forest Service managers with a means of identifying, monitoring, and evaluating law enforcement activities through statistical analysis of the information provided on law enforcement reports, such as warning and violation notices, incident reports, and court disposition updates. We believe that LEMARS meets the intent and purpose of S. 1985 in regard to a reporting system for ARPA violations.

Like any system, it is not without shortcomings. In some cases, adequate data is not provided to the system. Educating and motivating employees about LEMARS is an ongoing process. We believe, however, that LEMARS is as good as any new system that we could devise in response to S. 1985.

Mr. Chairman, this concludes my testimony. I would be pleased to answer any questions you may have.

Changes in Existing Law

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, the Committee notes the following changes in existing law made by the bill, S. 1985, as reported (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law to which no change is proposed is shown in roman):

Archaeological Resources Protection Act of 1979

AN ACT To protect archaeological resources on public lands and Indian lands, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

Section 1. This Act may be cited as the "Archaeological Resources Protection Act of 1979".

* * * * * * *

Sec. 13. As part of the annual report required to be submitted to the specified committees of the Congress pursuant to section 5(c) of the Act of June 27, 1960 (74 Stat. 220; 16 U.S.C. 469–469a), the Secretary of the Interior shall comprehensively report as a separate component on the activities carried out under the provisions of this Act, and he shall make such recommendations as he deems appropriate as to changes or improvements needed in the provisions of this Act. Such report shall include a brief summary of the actions undertaken by the Secretary under section 11 of this Act, relating to cooperation with private individuals.

"SEC. 14. The Secretaries of the Interior, Agriculture, and Defense and the Chairman of the Board of the Tennessee Valley Authority shall—

(a) develop plans for surveying lands under their control to determine the nature and extent of archaeological resources on those lands;

(b) prepare a schedule for surveying lands that are likely to contain the most scientifically valuable archaeological resources; and

(c) develop documents for the reporting of suspected violations of this act and establish when and how those documents are to be completed by officers, employees, and agents of their respective agencies.

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